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Attorneys for Defendant

Kay Bauman, M.D.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WILLIAM S. AHOLELEI,	)	CASE NO. 03-00171 HG-KSC
	)	
Plaintiff,	)	DEFENDANT KAY BAUMAN,
	)	M.D.'S ANSWER TO AMENDED
vs.	)	COMPLAINT; CERTIFICATE OF
	)	SERVICE
BARBARA KYSAR, DOCTOR S.	)	
PADERES, DOCTOR BAUMAN,	)	
DOES I-V,	)	
	)	
Defendants.	)	Trial Date: December 5, 2006
	)	

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306-072/p.answer complaint.al.sh.wpd

**DEFENDANT KAY BAUMAN, M.D.'S  
 ANSWER TO AMENDED COMPLAINT**

COMES NOW Defendant Kay Bauman (hereinafter "Bauman"), by

and through her counsel, Roeca, Louie & Hiraoka, and for answer to the Amended

Complaint filed herein, states as follows:

FIRST DEFENSE

1. The Amended Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. With respect to the allegations of Paragraphs I, II and III, Bauman states that she is without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations thereof.

3. With regard to the allegations contained in Paragraph IV of the Amended Complaint, Bauman admits that she is the Medical Director for the State of Hawaii, Department of Public Safety, but denies the truth of the remaining allegations contained in Paragraph IV.

4. Bauman denies the allegations contained in the Paragraphs V and VI.

5. Bauman intends to rely upon any matter constituting an avoidance or affirmative defense as set forth in Rule 8(c) of the Federal Rules of Civil Procedure and intends to seek leave to amend her answer to allege any such matters of which Bauman may become aware during the course of discovery or trial of this action.

6. Bauman denies any and all allegations contained in the Amended Complaint which are not specifically admitted herein.

THIRD DEFENSE

7. Plaintiff's injuries and/or damages, if any, were proximately caused or contributed to by his own negligence, and, therefore, Plaintiff cannot recover for said injuries and/or damages, if any.

FOURTH DEFENSE

8. Plaintiff's did not exercise due care to avoid the injuries complained of and, therefore, voluntarily and knowingly assumed the risk which proximately caused his injuries and damages, if any.

FIFTH DEFENSE

9. The claims of Plaintiff as alleged herein are due to the negligence, fault, breach of warranty, and/or strict liability of other parties over whom Bauman has no control and for which she bears no responsibility or liability.

SIXTH DEFENSE

10. Plaintiff has failed to mitigate any damages to which Plaintiff may be, or may appear to be, entitled.

SEVENTH DEFENSE

11. Plaintiff's claims are barred by his own conduct.

EIGHTH DEFENSE

12. Bauman gives notice that she may rely upon defenses provided under the Eleventh Amendment.

NINTH DEFENSE

13. Bauman will rely on the defense that Plaintiff's claims for punitive damages violate her rights under the Constitution of the United States of America and the Constitution of the State of Hawaii against excessive fines and to due process of law.

TENTH DEFENSE

14. Plaintiff's claims are barred by the doctrines of privilege and qualified privilege.

ELEVENTH DEFENSE

15. Bauman, her employees and agents are immune from liability for the exercise of a discretionary function.

TWELFTH DEFENSE

16. Bauman is not liable for Plaintiff's alleged injuries and/or damages on the basis of qualified immunity and Bauman hereby gives notice of her

intent to rely upon the defense of qualified immunity.

WHEREFORE, Defendant Bauman prays as follows:

- A. That the Amended Complaint against her be dismissed with prejudice and that she be awarded her costs and attorneys' fees;
- B. That if it be determined that Plaintiff and Defendants were negligent with respect to the events described in the Amended Complaint, the comparative degree of fault of each such party be determined in accordance with Section 663-31, H.R.S., and judgment be rendered accordingly.
- C. That the Court award such other and further relief as it deems just and equitable in the premises.

DATED: Honolulu, Hawaii, July 20, 2006.

/s/ April Luria  
ARTHUR F. ROECA  
APRIL LURIA  
Attorneys for Defendant  
Kay Bauman, M.D.

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	)	
vs.	)	
	)	
BARBARA KYSAR, DOCTOR S.	)	
PADERES, DOCTOR BAUMAN,	)	
DOES I-V,	)	
	)	Trial Date: December 5, 2006
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was duly served by depositing the same in the United States Mail, postage prepaid [M], hand-delivery [HD], facsimile transmission [F] or electronically through CM/ECF [E] to the following at their last known address:

WILLIAM S. AHOLELEI [ M ]  
c/o Halawa Correction Facility  
99-902 Moanalua Road  
Aiea, Hawaii 96701

Plaintiff

CARON M. INAGAKI, ESQ. [ E ]  
CINDY S. INOUYE, ESQ.  
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Attorneys for Defendant  
Sisar Paderes, M.D.

DATED: Honolulu, Hawaii, July 20, 2006.

/s/ April Luria  
ARTHUR F. ROECA  
APRIL LURIA  
Attorneys for Defendant  
Kay Bauman, M.D.